



March 4, 2011

Ms. Sherrie Kinkle
Property and Special Taxes Department
State Board of Equalization
450 N Street
Sacramento, CA 95814

RE: Possessory Interests Annual Usage Report Form BOE-502-P: Comments of the California Taxpayers Association in Interested Parties Process Concerning the Confidentiality of Possessory Interest Documents Held by Assessors

Dear Ms. Kinkle:

I am writing on behalf of the California Taxpayers Association (CalTax) to urge the State Board of Equalization to make it clear that possessory interest documents must be disclosed by assessors or the Board under the California Public Records Act. Many CalTax members have agreements with state and local agencies that create possessory interests.

CalTax is the state's largest and oldest organization representing taxpayers. Established as a nonpartisan, non-profit research and advocacy entity, CalTax supports good tax policy, opposes unnecessary taxes and promotes government efficiency.

Transparency is a necessary element of government efficiency. In this case, access to possessory interest documents will help all taxpayers ensure that assessors use comparable properties when enrolling values. The Constitution embodies transparency by requiring that agencies, such as county assessors, give the public access to public records. Moreover, the Public Records Act is an important tool for CalTax's members to help them make appraisal of property values and assessment of property taxes fair.

Understanding that the original purpose of the Interested Parties Process was focused on the confidentiality of the Annual Usage Reports in the hands of county assessors, CalTax participated in the Interested Parties Process on December 1, 2010 to express our position that, regardless of how state or local agencies transmit public records about possessory interests to assessors or the Board, public policy and the law require that all possessory interest records delivered to the assessors or the Board must be disclosed in response to a request brought pursuant to the Public Records Act.

The BOE Legal Memorandum posted on February 9, 2011, correctly concludes that assessors must disclose the Annual Usage Reports in response to a request under the Public Records Act. The constitutional, statutory and case law analysis in the Legal Memorandum is logical and reasonable. It also comports with CalTax's advocacy with the Legislature when it considered the relevant statutes.

There is no question that change of ownership statements filed with assessors by taxpayers are confidential under R&TC §481. However, CalTax believes that the Legal Memorandum may be interpreting R&TC §481 too broadly. This may lead assessors to

believe incorrectly that documents received by means other than the Annual Usage Reports should be "secret" as well. The Board staff and members should correct these impressions.

R&TC §481 resulted from of a recommendation of the task force assembled to help implement Proposition 13. CalTax was a member of this task force. The task force report says that responses by taxpayers on change in ownership questionnaires should be confidential and held secret by the assessors. In adopting R&TC §481, the Legislature was concerned with preserving longstanding policy to ensure the confidentiality of taxpayer disclosures – policies that CalTax has fought for and will continue to fight to preserve. On the other hand, there is no indication that the Legislature intended that public records provided by government entities would be held confidential by assessors when it passed R&TC §481 in 1979.

Moreover, when it passed R&TC §480.6 six years later, the Legislature required submission of documents to assessors by public agencies. The intention of the Legislature was to institute a process (i.e., requiring that state and local agencies transmit all possessory interest records necessary to county assessors to keep the property tax base whole) that was not considered when R&TC §481 was passed. In fact, R&TC §480.6 specifically relieves taxpayers of any filing obligation with respect to possessory interests. Therefore, contrary to the suggestion in the Legal Memorandum, the Legislature's "failure" to amend R&TC §481 when it passed R&TC §480.6 in 1995, does not demonstrate that the Legislature intended to extend the assessors' secrecy obligation with respect to taxpayer submissions to public records supplied by government agencies in an assessor's possession. In fact, the legislative history is silent on this point.

Thus, the Legal Memorandum is correct that R&TC§481 "provides that the change in ownership statement is confidential." But, that only applies to taxpayer-provided records. That language in R&TC §481 cannot support the inconsistent conclusion in the Legal Memorandum that, when a government entities supplies public records to the assessor in a form other than the Annual Usage Report "the same data [is] confidential or not confidential depending on the form on which it is delivered to the assessor." The Legislature did not intend this arbitrary and unreasonable construction of the interplay between R&TC §§480.6 and 481.

The most reasonable construction result favors transparency. No taxpayer-generated records requiring secrecy under the Revenue and Taxation Code or the Government Code are at stake. The Board must correct the arbitrary suggestion in the Legal Memorandum by clarifying that all possessory interest records supplied by public agencies and held by the assessors or the Board are available to the public – regardless of how they are requested or provided.

You may reach me at 916-930-3104 or gina@caltax.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Gina Rodriguez". The signature is written in a cursive, flowing style.

Gina Rodriguez, Vice President
State Tax Policy